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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/558,388	11/29/2005	Tadahiro Hiramoto	040894-7353	5709

9629 7590 12/19/2008

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EXAMINER	
MEHTA, HONG T	

ART UNIT	PAPER NUMBER
1794	

MAIL DATE	DELIVERY MODE
12/19/2008	PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Office Action Summary	Application No.	Applicant(s)	
	10/558,388	HIRAMOTO ET AL.	
	Examiner	Art Unit	
	HONG MEHTA	1794	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE *3* MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

1)☒ Responsive to communication(s) filed on *29 November 2005*.

2a)☐ This action is **FINAL**. 2b)☒ This action is non-final.

3)☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

4)☒ Claim(s) *13-31* is/are pending in the application.

4a) Of the above claim(s) _____ is/are withdrawn from consideration.

5)☐ Claim(s) _____ is/are allowed.

6)☒ Claim(s) *13-31* is/are rejected.

7)☐ Claim(s) _____ is/are objected to.

8)☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

9)☐ The specification is objected to by the Examiner.

10)☐ The drawing(s) filed on _____ is/are: a)☐ accepted or b)☐ objected to by the Examiner.

Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).

Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).

11)☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

12)☒ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).

a)☒ All b)☐ Some * c)☐ None of:

1.☐ Certified copies of the priority documents have been received.

2.☐ Certified copies of the priority documents have been received in Application No. _____.

3.☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

1) ☒ Notice of References Cited (PTO-892)
2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
3) ☒ Information Disclosure Statement(s) (PTO/SB/08) Paper No(s)/Mail Date *November 29, 2005*.
4) ☐ Interview Summary (PTO-413) Paper No(s)/Mail Date. _____.
5) ☐ Notice of Informal Patent Application
6) ☐ Other: _____.

DETAILED ACTION

This office action is in response to application 10/558,388 filed on November 29, 2005. Claims 1-12 are canceled, claims 13-31 are pending, claims 13 and 14 are independent.

Claim Objections

Claims 13 and 14 are objected to for including parenthetical notations. It is not clear if the information within the parenthesis is intended to limit the claim.

Claim Rejections - 35 USC § 102

1. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

> A person shall be entitled to a patent unless –
>
> (b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

2. **Claims 13 -18 and 31 are rejected under 35 U.S.C. 102(b) as being anticipated by Rohdewald (US 5,993,867 A).**

3. Regarding claims 13-18, Rohdewald discloses a product by process, a fresh tea leaf powder obtained by collecting fresh leaf of the tea plant (*Camellia, Thea Chinensis or Thea Sinensis*) in cooled conditions (col. 1, lines 60-65), followed by freeze drying and subsequently "milling" the dried tea leaves into a size of powder by nitrogen gassing (col. 2, lines 65-67 and col. 3, lines 1-3). Rohdewald discloses a treated flower composition by obtaining the flower camomile (chamomile) with the fresh tea leaf powder (col. 2, line 51).

Claim Rejections - 35 USC § 103

4. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

> (a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negatived by the manner in which the invention was made.

5. The factual inquiries set forth in *Graham* **v.** *John Deere Co.*, 383 U.S. 1, 148 USPQ 459 (1966), that are applied for establishing a background for determining obviousness under 35 U.S.C. 103(a) are summarized as follows:

1. Determining the scope and contents of the prior art.
2. Ascertaining the differences between the prior art and the claims at issue.
3. Resolving the level of ordinary skill in the pertinent art.
4. Considering objective evidence present in the application indicating obviousness or nonobviousness.

6. This application currently names joint inventors. In considering patentability of the claims under 35 U.S.C. 103(a), the examiner presumes that the subject matter of the various claims was commonly owned at the time any inventions covered therein were made absent any evidence to the contrary. Applicant is advised of the obligation under 37 CFR 1.56 to point out the inventor and invention dates of each claim that was not commonly owned at the time a later invention was made in order for the examiner to consider the applicability of 35 U.S.C. 103(c) and potential 35 U.S.C. 102(e), (f) or (g) prior art under 35 U.S.C. 103(a).

7. **Claims 19-28 are rejected under 35 U.S.C. 103(a) as being unpatentable over Rohdewald (US 5,993,867 A) as applied to claims 13 and 14 above, and further in view of Marion (US 3,911,145 A)**.

8. Rohdewald teaches the claimed inventions of 13 and 14 as discussed above. Rohdewald does not disclose the additions of extract and aroma properties of tea leaf, vegetable, or fruit with

tea powder. However, Marion teaches tea beverage composition, by process comprising tea extracts with fruit flavors and aroma. (Abstract).

9. Regarding claims 19-28, Marion discloses a beverage composition with tea extracts and fruit extracts and aromas obtained by extraction slurry of soluble tea solids (col. 1, lines 51-56) and aromatic extracts (col. 2, lines 1-6) group consisting of following fruits: apricots, banana, apple, grape, date, plum and fig.

10. It would have been obvious to a person of ordinary skill in the art at the time of the invention to combine the tea extracts and fruit aromatic extracts of Marion with the freeze dry tea powder of Rohdewald. Marion provides a process of enriching tea composition due to loss of organoleptic quality by the intense heat treatment in tea processing thus by additional of tea extracts and aromatic constituents to the tea leaf powder provides more balance and complete flavor experience in tea consumption ('145, col. 1, lines 8-21). It would have been obvious to employ the teaching of Marion's flavor extracts and aromas into Rohdewald's preservation of freshness system of freeze dried fresh tea leaf powder contributing to the overall quality flavor of the tea beverage composition ('867, col. 1, lines 13-19; 45-49).

11. **Claims 29 and 30 are rejected under 35 U.S.C. 103(a) as being unpatentable over Rohdewald (US 5,993,867 A) as applied to claims 13 and 14 above, and further in view of Marion (US 3,911.145 A) and McCook et al. (US 5,306,486 A).**

12. Rohdewald discloses the claimed inventions of 13 and 14 as discussed above. Rohdewald fails to discourse a cosmetic comprising an aroma and extracts of tea, vegetable, fruit or flower with the tea powder. Marion teaches the enrichment of flavor extracts and aroma to tea

composition. McCook et al., in cosmetic art, discloses a green tea concentrate by extraction composition (col. 2, line 50-59) formulated with a sunscreen lotion.

13. It would have been obvious to a person of ordinary skill in the art at the time of the invention to recognize the benefit effects of tea properties of Rohdewald's freeze dried tea powder and additional aromas and extracts of Marion's process, and to combine the cosmetic formulation of McCook's tea sunscreen composition.

14. The motivation for doing so would have been to get a superior quality of skin care lotion to combine Rohedewald's process discloses the preserve anti-oxidative and inactivation of free radicals properties within freeze dry tea powder ('867, col. 1, lines 20-28) and the scented aromas and extracts of Marion's process to the sunscreen lotion of McCook's that provide a better cosmetic ultraviolet radiation protection ('486, col. 2, lines 31-44).

Conclusion

15. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to HONG MEHTA whose telephone number is (571)270-7093. The examiner can normally be reached on Monday thru Thursday, from 7:30 am to 4:30 pm EST..

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Jennifer McNeil can be reached on 571-272-1540. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see http://pair-direct.uspto.gov. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

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/Jennifer McNeil/

Supervisory Patent Examiner, Art Unit 1794